



Supreme Court of the United States.

OCTOBER TERM, 1942.

JOHN HANCOCK MUTUAL LIFE INSURANCE
COMPANY,

Petitioner,

v.

THOMAS J. CASEY, TRUSTEE,

Respondent.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of the Courts Below.

The memorandum of decision for injunction entered in the District Court September 16, 1942, is set forth in the record at page 42. The orders of the District Court dated September 16, 1942, appealed from are set forth in the record at pages 22 to 24, inclusive, and the order for turn over dated September 17, 1942, appealed from is set forth in the record at page 41 and the opinion of the Circuit Court of Appeals for the First Circuit dated March 1, 1943, is set forth in the record at pages 51 to 53, inclusive.

II.**Jurisdiction.**

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of the Bankruptcy Act, United States Code, 1940 Edition, Title 11, Section 47C, and under Section 240 of the Judicial Code as amended, United States Code, 1940 Edition, Title 48, Section 347.

III.**Statement of the Case.**

On November 1, 1940, Carlton Hotel, Inc., hereinafter referred to as the "debtor," purchased from John Hancock Mutual Life Insurance Company the premises known as the Hotel Buckminster, and certain personal property contained therein, for \$360,000, giving as part of the purchase price a mortgage note (Record, page 28) in the sum of \$345,000, and as security for said note conveyed in mortgage said real and personal property and assigned the existing leases, which assignment included the Yankee Network lease hereinafter referred to (Record, pages 30, 35 and 39).

On August 1, 1942, the debtor failed to make the payments on the mortgage note provided to be made on that date and thereafter on August 5, 1942, the debtor filed its petition under the provisions of Chapter 10 of the Bankruptcy Act, alleging the existence of the aforementioned real and personal property mortgages and debt and that "the terms and conditions of said mortgage are burdensome and in need of adjustment; the mortgagee threatens to foreclose its mortgage."

On August 12, 1942, the mortgagee for the aforementioned breach of condition of the said mortgages took possession of the property conveyed thereby and duly recorded evidence of its possession (Respondent's Exhibit A, page 42) and thereafter continued in possession of the real and personal property conveyed by said mortgages.

On August 17, 1942, the United States filed a petition for condemnation and obtained an order for possession upon its petition condemning for use for military purposes the real estate conveyed by said mortgage excepting therefrom that portion of the premises covered by the lease to the Yankee Network herein referred to.

On August 18, 1942, an order was entered approving the debtor's petition for reorganization and Thomas J. Casey was appointed trustee of the debtor.

On August 31, 1942, the trustee filed a petition for injunction alleging that the real estate and personal property conveyed by said mortgages are the principal and only assets of any real value owned by the debtor and "that the foreclosing of said mortgages, will deprive the general unsecured, as well as the secured creditors of the debtor corporation of any possibility of recovery of any portion of the debts due them from the debtor, that the foreclosing of said mortgages is unfair, and unjust, and unwarranted, and is devoid of any equity," pursuant to which petition the court, on September 16, 1942, upon consideration of the pleadings and statements of facts presented by counsel, issued an injunction (1) restraining the mortgagee from "proceeding with the foreclosure proceedings brought to foreclose the mortgages" on the real and personal property and restraining the mortgagee from exercising the power of sale contained in the mortgages, (2) ordering the mortgagee to relinquish possession of the said real and personal property covered by said mortgages, and (3) ordering the mortgagee to surrender said real and per-

sonal property to the trustee, and on September 17, 1942, the court ordered the mortgagee to turn over to the trustee \$1100 collected from the Yankee Network as rent for the month of September, 1942 (Record, page 41).

The petitioner by its appeal to the Circuit Court challenged the orders of the District Court on the grounds that they were based upon an improper construction of Title 11, Chapter 10, United States Code, 1940 Edition (the Chandler Act), and if so construed, the Chandler Act was invalid in that it violated the Fifth Amendment of the Constitution.

IV.

Specifications of Errors.

The Circuit Court of Appeals erred—

1. In construing Sections 256 and 257 of the Chandler Act to authorize the District Court to order the mortgagee in possession of the premises after default to turn over to the trustee the possession of the premises and the rents collected therefrom.
2. In construing Sections 256 and 257 of the Chandler Act to authorize the court to order the mortgagee, the holder of a valid assignment of leases, to turn over to the trustee the rents collected by virtue of such assignment.
3. In construing Sections 111 to 116, inclusive, of the Chandler Act to authorize the orders staying the mortgagee from foreclosing its mortgage by the exercise of the power of sale contained in said mortgage.
4. In ruling that “the rights of the mortgagee under its Massachusetts form of mortgage to take possession and foreclose on breach of condition were not impaired, from a constitutional point of view, by the exercise of the authority conferred by the Bankruptcy Act. The exercise of those

rights were suspended for the time being for the purposes of the Act, the constitutionality of which cannot now be doubted."

(5) In ruling that the property (conveyed by the mortgages) was *in custodia legis* as of the date of the petition.

For a further statement of the errors alleged to have been committed by the District Court and in which the Circuit Court of Appeals by its opinion and order affirming various orders of the District Court erred see "Statement of the Points Upon Which the Appellant Intends to Rely on Appeal" (Record, pages 44 to 48, inclusive).

V.

Argument.

This is the first occasion that has been presented for the determination of this court of the application of the Chandler Act to the rights of mortgagees in title jurisdictions to foreclose or to possession.

Under prior Bankruptcy Acts there existed a well-founded distinction between the application of the Bankruptcy Act to the rights of mortgagees in lien jurisdictions and in title jurisdictions.

In lien jurisdictions and in some title jurisdictions it was necessary for the mortgagee to bring court proceedings in order to foreclose his mortgage, change the title from mortgagor to mortgagee, obtain possession of the premises or cut off the equity of redemption. The filing of a petition under the Bankruptcy Act by staying the court proceedings prevented foreclosure of the mortgage, change in title, change in possession and the cutting off of the equity of redemption. But, in such title jurisdictions as Massachusetts, the stay of court proceedings did not operate to prevent the mortgagee from taking possession or

from selling under the power of sale contained in the mortgage.

In re Ginestri, 15 Fed. (2d) 764 (1926); affirming 12 Fed. (2d) 456.

Harlow Realty Company v. Cotter, 284 Mass. 68 (1933).

Hall v. Bliss, 118 Mass. 554 (1875).

Harvey v. Smith, 179 Mass. 592 (1901).

Massachusetts Hospital Life Insurance Company v. Wilson, 10 Met. 126 (1845).

Under Section 77B of the Bankruptcy Act, 48 Stat. 911, 912, the scope of the Bankruptcy Act was extended, but in *Tuttle v. Harris*, 297 U.S. 225 (1936), it was determined that Section 77B of the Bankruptcy Act did not authorize the transfer of possession to the trustee from a mortgagee who, after condition broken, is, under the law of Illinois, the owner and as such is entitled as of right to the possession.

The distinction between results obtained in title jurisdictions from those obtained in lien jurisdictions persisted under the amendments to the Bankruptcy Act known as Sections 77 and 77B.

For illustrations involving legal title see—

Tuttle v. Harris, 297 U.S. 225 (1936).

Continental Bank and Trust Company of New York v. Nineteenth and Walnut Streets Corporation, 79 Fed. (2d) 284 (1935).

In re H. K. Porter, 24 Fed. Supp. 767 (1938).

Reighard v. Higgins Enterprises, Inc., 90 Fed. (2d) 569 (1937).

In re Frances E. Willard National Temperance Hospital, 82 Fed. (2d) 804 (1936).

And for illustrations involving liens see—

Continental Illinois Bank and Trust Company v. Chicago, Rock Island and Pacific Railway Company, 294 U.S. 648 (1939).

In re Franklin Gardens Apartments, 47 American Bankruptcy Reports (N.S.) 376, 124 Fed. (2d) 451 (1936).

It is submitted that the District Court and the Circuit Court of Appeals for the First Circuit have in this case gone far beyond the scope permitted to Bankruptcy Courts under prior bankruptcy laws. The question arises as to whether or not upon proper interpretation of the Chandler Act such decrees and orders are authorized. The District Court and the Circuit Court of Appeals in its opinion have found the authority to order the transfer of possession of the property and to order the mortgagee to turn over to the trustee the rents collected by it in Sections 256 and 257 of the Act (52 Stat. 902, United States Code, Title 11, Chapter 10, Sections 656 and 657; Record, page 52). Chapters 256 and 257 are a part of Article XIV of the Act, which article is entitled "Prior Proceedings" (United States Code, Title 11, subchapter XIV). Article XIV as a whole relates to court proceedings instituted prior to the filing of the petition for reorganization. If construed in connection with the context of Article XIV, the last sentence of Section 257, "The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage," may be limited to trustees under a trust deed or mortgagees who are in possession as a result of pending court proceedings, as in—

Tuttle v. Harris, 297 U.S. 225.

If such is the proper construction, the court below has misapplied that section in the present case. In the present case there were no prior court proceedings, and under the laws of Massachusetts none were necessary.

Also, a question arises as to the meaning of the words "property of the debtor" as used in that sentence. Under Massachusetts laws the mortgagee is the owner even before default; that is to say, the mortgage conveys the title to the mortgagee.

City of Boston v. Quincy Cold Storage and Warehouse Company, 1942 Massachusetts Advance Sheets, pages 1867, 1877 (December 30, 1942).

Do the words "property of the debtor" include property to which he has neither the title nor right to possession?

If the aforesaid last sentence of Section 257 of the Chandler Act is limited in its application to the context of Article XIV, or if proper limitations are placed on the meaning of the words "property of the debtor" as used in that sentence, no constitutional question arises, but as applied by the District Court and the Circuit Court of Appeals, the Act has, to paraphrase the language of this court in—

Louisville Bank v. Radford, 295 U.S. 555, 601—

taken from the mortgagee (bank) and given to the trustee (Radford) rights in specific property which are of substantial value. A question of the validity of the Act as violating the Fifth Amendment of the Constitution is thus presented.

The District Court and the Circuit Court of Appeals have found authority for staying the foreclosure by restraining the exercise of the power of sale in Sections 111-

116 of the Chandler Act, which sections are part of Article III, defining the jurisdiction and power of the court.

Admitting for the purposes of this brief that, upon proper cause shown, the Bankruptcy Court has power to restrain such sale, does the court, merely because of the fact of the filing or approval of a petition for reorganization, have authority to stay the foreclosure under the power of sale contained in the mortgage or to order the mortgagee to surrender its possession to the trustee in neither of which is involved any court proceedings or any act to enforce a lien? (Section 113.)

Under Massachusetts law a mortgagee may foreclose its mortgage, that is, cut off the equity of redemption by court action (General Laws, Chapter 244, Sections 3 to 5, inclusive) or by exercise of the power of sale contained in the mortgage (General Laws, Chapter 244, Sections 14 to 17, inclusive), and may enter (by General Laws, Chapter 244, Section 1) and continue the possession until judgment or sale.

Under the Chandler Act as well as under prior bankruptcy laws, foreclosure by court proceeding is and was stayed. Under prior bankruptcy laws foreclosure by exercise of the power of sale and the right to enter were not stayed.

In re Ginestri, 15 Fed. (2d) 764 (1926).

Hall v. Bliss, 118 Mass. 554 (1875).

Harlow Realty Company v. Cotter, 284 Mass. 68 (1933).

It is of great importance that the question whether the Chandler Act stays such foreclosures and rights to enter and remain in possession be authoritatively determined. But more broadly there is involved the fundamental question of the jurisdiction of the Bankruptcy Court to admin-

ister the property and affairs of persons other than the debtor. In the present case the mortgagee was the owner of the property involved, much the same as if it were the vendor under a conditional sale agreement. It had title, and after default right to possession, the actual possession and, by virtue thereof and of the assignment of The Yankee Network, Inc., lease, stood in the position of landlord to The Yankee Network, Inc. The debtor's property interest was merely the right to obtain title and possession upon payment of the mortgage debt; that is, a right of redemption.

Having jurisdiction of the debtor and his right of redemption, is the jurisdiction of the Bankruptcy Court limited to the debtor and his property (the right of redemption), or does it encompass the property, rights, interests and relationship of others with which the affairs and property of the debtor may be involved, touch or concern?

Is the Chandler Act to be construed to give authority to administer the property and affairs of persons other than the debtor when the debtor has a property right or interest therein?

If so construed, does it violate the Fifth Amendment of the Constitution?

Since the precise questions here presented have not been heretofore decided under the Chandler Act, and all of the cases cited in your petitioner's petition for a writ of certiorari with which it is alleged the decision sought to be reviewed is in conflict arose under prior Bankruptcy Acts, it may be denied that any conflict exists; but such denial must presuppose that the Chandler Act has so broadly extended the jurisdiction and power of the Bankruptcy Court that the prior decisions are no longer of use or effect. Such a denial lends emphasis to the necessity for an authoritative decision by this court upon the Chandler Act.

The allegations that there exists a conflict with the decisions cited in the petition are based upon the contention that there has been no such broad extension of jurisdiction and power by the Chandler Act, and if there was such an extension, it violates the Fifth Amendment of the Constitution.

In *Tuttle v. Harris*, 297 U.S. 225, and *Duparquet v. Evans*, 297 U.S. 216, it was decided that the words "equity receiver" as used in the Bankruptcy Act were not to be broadly construed to encompass a receiver in mortgage foreclosure proceedings and that the Bankruptcy Court was without authority to transfer possession to the trustee from a mortgagee who, after condition broken, is the owner of a legal estate and as such is entitled to possession. Here it is contended that the words "mortgage foreclosure proceedings" as used in the Act are limited to court proceedings and are not to be broadly construed to include foreclosure by the exercise of power of sale or to divert possessions of the title holder, and we thus have a situation where, contrary to the precedent of *Tuttle v. Harris*, the court has assumed to transfer to the trustee the possession of a mortgagee who had the legal title to the premises and after condition broken had the right to possession.

The decision of the Circuit Court of Appeals is in conflict with the decision in *Louisville Bank v. Radford*, 295 U.S. 555, in so far as that decision is authority for the proposition that the right to the possession of specific property is an interest in property protected by the Fifth Amendment of the Constitution and a Bankruptcy Act so applied as to transfer that right to possession is void. The decisions of the various Circuit Courts of Appeals with which it is alleged the decision sought to be reviewed is in conflict are all cases arising in title jurisdictions where the mortgagee is in possession of the premises by virtue of his

title and as a result of a breach of condition by which the mortgagee acquired the right to possession. All arose prior to the Chandler Act and all held it was improper to transfer the possession of the mortgaged premises to the trustee. Unless the Chandler Act is construed to authorize such transfer of possession and as so construed is not void as violating the Fifth Amendment of the Constitution, there exists such a conflict as was once determined by the decision in *Tuttle v. Harris*, 297 U.S. 225, but which now, by reason of the changes in the bankruptcy law made by the Chandler Act, has again arisen to confuse the bench and bar, the holders of mortgages in title jurisdictions and litigants in reorganization proceedings.

The allegations in the petition for a writ of certiorari that the decision sought to be reviewed is in conflict with decisions of the Supreme Judicial Court of Massachusetts upon questions of local law relating to title and right to possession of mortgaged property are based upon the proposition that, like prior Bankruptcy Acts, the Chandler Act is not to be construed to give jurisdiction to administer the property and affairs of persons other than the debtor, and that, by the decisions cited, the property conveyed by the mortgage deed after condition broken is the property of the mortgagee to which the mortgagee has title, the right to possession and the power to sell, all of which property, right and power of the mortgagee are not affected by the mortgagor's (debtor's) petition for reorganization, since the Bankruptcy Court obtained jurisdiction only of the property which the debtor had, *i.e.*, the right of redemption.

The improper application of the decision of this court in—

*Continental Illinois National Bank and Trust
Company v. Chicago, Rock Island and Pacific
Railway Company, 294 U.S. 648—*

to this case lies in the assumption that, since that case held the former Section 77 of the Bankruptcy Act did not violate the Fifth Amendment, the Chandler Act does not violate it, and in the assumption that, because the temporary restraining of the exercise of a power of sale of securities by a pledgee was authorized, an order for the transfer of the possession of the owner of the property and income therefrom to the trustee was likewise authorized. Furthermore, a persuasive cause for the restraining order in the Chicago Rock Island case was that such immediate sale not only would transfer the title which the debtor had to the securities at the time of filing the petition but would increase the number and amount of claims against the debtor to the serious embarrassment of the administration of the reorganization proceedings. Such a restraining order as was determined not to be violative of the Constitution is not analogous to restraining the exercise of a power of sale under a Massachusetts mortgage where legal title to such property was in the mortgagee and the title to be transferred to the purchaser was not a title or estate which the debtor had at the time of the filing of the petition. True, in the Chicago, Rock Island case the court made an analogy between the restraint of the exercise of the power of sale granted in that case to the stay of foreclosure proceedings and foreclosure sales, but the court was there referring to the decisions in so-called lien jurisdictions and those title jurisdictions where court proceedings were necessary to foreclose and sell, and did not have in mind or intend to cast any doubt upon the correctness of its own decisions and the decisions in the state and federal courts in Massachusetts and other so-called title jurisdictions.

There was not involved in the Chicago Rock Island case any transfer of possession from the pledgee to the trustee of property or the income therefrom, only the temporary stay of the exercise of a power to sell pledged securities.

Can it be said that to deprive a mortgagee of the possession of the mortgaged premises, his right to the possession thereof and his right to collect rents therefrom is so analogous to the circumstances of the Chicago Rock Island case that the principle of that case is applicable to the situation here involved?

Summary.

Because—

(1) there exists a question as to the interpretation of Chapter 10 of the Bankruptcy Act of great importance and of wide interest fundamental to the jurisdiction and proper administration of proceedings for reorganization of corporations where the interest of mortgagees in title jurisdictions are involved, and

(2) there exists a serious question as to the constitutionality of the Chandler Act as applied in the present case, and

(3) there exists a confusion and diversity of opinion as to the proper interpretation of the Chandler Act evidenced by the apparent conflict of opinion of the various Circuit Courts of Appeals, and

(4) there has been a misinterpretation or improper application of decisions of the Supreme Court by the Circuit Court of Appeals in the present case—

there is presented a case which ought to be reviewed by this Honorable Court.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the errors of the Circuit Court of

Appeals for the First Circuit may be corrected and in order that there may be an authoritative decision on the scope of the jurisdiction and power of the Bankruptcy Court under the Chandler Act and in order that there may be an authoritative decision as to the constitutionality of the Chandler Act as applied to the rights of mortgagees in title jurisdiction and to such an end a writ of certiorari should be granted and this court should review the decision of the Circuit Court of Appeals for the First Circuit and finally reverse it.

Respectfully submitted,

by GARALD K. RICHARDSON,

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LIFE INSURANCE COMPANY, *Petitioner.*